Supreme Court, U.S.
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No. 90-1435 (3)

In The

Supreme Court of the United States

October Term, 1990

COOK COUNTY OFFICERS ELECTORAL BOARD, et al.,

Petitioners,

v.

DOROTHY REED, et al.,

Respondents.

Petition For Writ Of Certiorari To The Supreme Court Of Illinois

REPLY BRIEF OF PETITIONERS COOK COUNTY OFFICERS ELECTORAL BOARD, ET AL.

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INTRODUCTION

Two petitions for writs of certiorari have now been filed in this matter: No. 90-1126, filed by the Harold Washington Party ("HWP") candidates Barbara J. Norman, et al., and No. 90-1435, filed by the Cook County Officers Electoral Board and its members, David D. Orr, Jack O'Malley and Aurelia Pucinski. The Board and its members are nominal respondents in No. 90-1126.

While the brief in opposition filed by Dorothy Reed, et al., is labeled as No. 90-1126, the issues raised are identical to those raised in No. 90-1435. Thus, the Board and its members respectfully submit this reply to the brief in opposition.

ARGUMENT

I. THE CONTROVERSY IS NOT MOOT.

Respondents suggest there is no longer a need for the Court to adjudicate petitioners' ballot access rights since the election has passed. However, under Illinois law, the right of the Harold Washington Party to future ballot access hinges on the legitimacy of the HWP candidates' placement on the November, 1990 ballot. The HWP candidates received over 5% of the vote, entitling their party to an automatic line on future ballots.

Additionally, the decision of the Illinois Supreme Court and this Court's stay order of October 25, 1990 has cast great uncertainty on the manner in which new political party candidates obtain ballot access in Illinois. The controversies in this case will reoccur whenever new political party candidates run in Illinois, or four times

every two years. They will first repeat in December, 1991, when petitions for county offices are filed across the state. The Illinois Supreme Court's narrow decision will stymie new political party formation in Illinois unless and until this Court addresses the issues raised by the Petition.

II. THE DECISION BELOW INVOLVED SUBSTANTIAL FEDERAL QUESTIONS.

Respondents argue that the judgment of the Illinois Supreme Court merely involved construction of a state statute, and thus rested on independent state grounds. However, that statutory interpretation is directly at odds with the federally-protected rights of the HWP candidates and their supporters. In fact, the electoral board's findings were specifically motivated by the board's desire to interpret the statutes in a manner consonant with well-recognized federal constitutional principles. See Petition in No. 90-1435 at 40a, 47a.

III. THE STATUTORY PROHIBITION AGAINST USE OF AN ESTABLISHED PARTY NAME DOES NOT PREVENT VOTER CONFUSION.

Respondents correctly point out that the HWP is an established political party in Chicago. The respondents claim that the HWP could not be established under that name in Cook County because then two "different" parties would have the same name, thus fostering "intolerable" voter confusion. For example, respondents claim that under that board's analysis, candidates may form countless new "republican" or "democratic" parties at

will, leading to voter confusion as to which is the "real" party.

However, the Illinois Election Code prevents this from happening. First, the republican and democratic parties are established political parties statewide and in every county, city, and other jurisdiction in Illinois.[1] Thus, candidates who wish to adopt those labels cannot run as new party candidates. Rather, those candidates must compete in a primary against the other republican or democratic candidates. Ill.Ann.Stat. (1989) ch. 46, ¶10-1 (Smith-Hurd 1990 Supp.).

Secondly, candidates for county offices run only in even-numbered years; candidates for Chicago municipal offices run in the odd-numbered years. Compare Ill.Ann.Stat. ch. 46, ¶¶2A-10 - 2A-24 (county offices) and ¶¶2A-25 - 2A-26 (Chicago municipal offices). Thus, the "two" Harold Washington parties will never be on the ballot at the same time.

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[1] Both parties retained this special status by receiving over 5% of the vote at the November, 1990 election for statewide candidates. Ill.Ann.Stat. (1989) ch. 46, ¶10-1 (Smith-Hurd 1990 Supp.)

IV. THE REQUIREMENT THAT A CANDIDATE'S RUNNING-MATES MUST ALSO OBTAIN SUFFICIENT SIGNATURES TO OBTAIN BALLOT ACCESS SERVES NO STATE INTERESTS.

The Electoral Board disqualified the HWP candidates for suburban Cook County Commissioner because the party did not present the requisite 25,000 signatures of suburban voters. However, the board declined to disqualify the remaining HWP candidates because of their suburban running-mates' deficiencies.

The Illinois Supreme Court specifically held that this inadequacy doomed the rest of the HWP county ticket. Petition in No. 90-1435 at 4a. The respondents merely assert that the 25,000 suburban requirement is not too great a barrier for those candidates to surmount. Significantly, the respondents do not seem to disagree with petitioners' argument that the whole slate cannot be stricken merely because one portion is insufficient. The state interest at stake is ensuring that candidates have a measure of support in their voting jurisdiction. Requiring separate suburban signatures for county candidates does nothing to further that interest.

CONCLUSION

For these reasons, the Petition for Writ of Certiorari should be granted.

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